



*Commonwealth of Virginia*

***VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY***

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**STATE WATER CONTROL BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO  
HITT Contracting, Inc.  
For  
LVL Data Center**

**Virginia Water Resources and Wetlands Protection Program - Unpermitted;  
Construction Stormwater General Permit Registration No. VAR10M336**

**SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, 62.1-44.15:25, and 62.1-44.15:48, between the State Water Control Board and HITT Contracting, Inc., regarding the LVL Data Center, for the purpose of resolving certain violations of State Water Control Law, the applicable permit, and regulations.

**SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.

2. “2019 Permit” means the General VPDES Permit for Discharges of Stormwater from Construction Activities, No. VAR10, promulgated at 9 VAC 25-880-70, which was issued under the State Water Control Law, the VSMP Regulations, and the General Permit Regulation on July 1, 2019 and which expires on June 30, 2024.
3. “Board” means the State Water Control Board, a permanent citizens’ board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
4. “Construction Activity” means any clearing, grading or excavating resulting in land disturbance of equal to or great than one acre, or disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or great than one acre.
5. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
6. “Director” means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
7. “Discharge” means, when used without qualification, a discharge of a pollutant, or any addition of a pollutant or combination of pollutants, to state waters or waters of the contiguous zone or ocean other than a discharge from a vessel or other floating craft when being used as a means of transportation.
8. “Facility” or “Site” means the LVL Data Center located off Prison Road in Mecklenburg County, Virginia, from which discharges of stormwater associated with construction activity occur.
9. “HITT” means HITT Contracting, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. HITT is a “person” within the meaning of Va. Code § 62.1-44.3.
10. “Impacts” means results caused by those activities specified in §62.1-44.15:20A of the Code of Virginia.
11. “Notice of Violation” or “NOV” means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
12. “Order” means this document, also known as a “Consent Order” or “Order by Consent,” a type of Special Order under the State Water Control Law.
13. “Pollutant” means any substance, radioactive material, or heat which causes or contributes to, or may cause or contribute to pollution. 9 VAC 25-210-10.

14. "Pollution" means such alteration of the physical, chemical or biological properties of any state waters as will or is likely to create a nuisance or render such waters: (i) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (ii) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (iii) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses; provided that (a) an alteration of the physical, chemical, or biological property of state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of or discharge or deposit to state waters by other owners is sufficient to cause pollution; (b) the discharge of untreated sewage by any owner into state waters; and (c) contributing to the contravention of standards of water quality duly established by the board, are "pollution." Va. Code § 62.1-44.3; 9 VAC 25-210-10.
15. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
16. "Regulations" means the Virginia Water Protection Permit Program Regulations, 9 VAC 25-210 *et seq.*
17. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 2.2 (Va. Code §§ 62.1-44.15:20 through 62.1-44.15:23) of the State Water Control Law addresses the Virginia Water Resources and Wetlands Protection Program.
18. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3 and 9 VAC 25-210-10.
19. "Stormwater" means precipitation that is discharged across the land surface or through conveyances to one or more waterways and that may include stormwater runoff, snow melt runoff, and surface runoff and drainage. Va. Code § 62.1-44.15:24.
20. "Surface water" means all state waters that are not ground waters as defined in Va. Code § 62.1-255.
21. "SWPPP" means Stormwater Pollution Prevention Plan, which is a document that is prepared in accordance with good engineering practices and that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges. A SWPPP required under a VSMP for construction activities shall identify and require the implementation of control measures, and shall include, but not be limited to the inclusion of, or the incorporation by reference of an approved erosion and sediment control plan, an approved stormwater management plan, and a pollution prevention plan. 9 VAC 25-870-10.
22. "Va. Code" means the Code of Virginia (1950), as amended.

23. “VAC” means the Virginia Administrative Code.
24. “VSMP” means the Virginia Stormwater Management Program, which is a program approved by the Soil and Water Conservation Board after September 13, 2011, and until June 30, 2013, or the State Water Control Board on and after June 30, 2013, that has been established by a VSMP authority to manage the quality and quantity of runoff resulting from land-disturbing activities and shall include such items as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement, where authorized in this article, and evaluation consistent with the requirements of this article and associated regulations. Va. Code § 62.1-44.15:24.
25. “VSMP authority” means an authority approved by the Board after September 13, 2011, to operate a VSMP or, until such approval is given, the Department. An authority may include a locality; state entity, including the Department; federal entity; or for linear projects subject annual standards and specifications in accordance with subsection B of § 62.1-44.15-31, electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-5102. Va. Code § 62.1-44.15:24.
26. “VSMP Regulations” means the Virginia Stormwater Management Program (VSMP) Regulations, 9 VAC 25-870-10 et seq.
27. “VWP” means the Virginia Water Protection program

### **SECTION C: Findings of Fact and Conclusions of Law**

1. HITT is the operator of the LVL DATA Center construction activity located in Mecklenburg County, Virginia, from which stormwater associated with construction activity is discharged.
2. DEQ is the VSMP authority for the Site.
3. HITT applied for and, on February 18, 2020, was granted coverage under the 2019 Permit, VAR10 of the General Permit Regulation. HITT was assigned registration number VAR10M366.
4. The 2019 Permit allows HITT to discharge stormwater associated with construction activities from the Site to an unnamed tributary of Coleman Creek in strict compliance with the terms of the 2019 Permit.
5. The Department has not issued coverage under any permit or certificate to HITT for this Facility other than under the 2019 Permit.

6. State Waters Affected include an unnamed tributary to Coleman Creek – Roanoke River Basin. During the 2020 305(b)/303(d) Water Quality Assessment, the unnamed tributary was not assessed for any Designated Use. It is therefore considered a Category 3A waterbody.

The discharge is located within the study area for Lower Allen Creek watershed in the Kerr Reservoir Tributaries Bacterial TMDL (SWCB approval 12/7/2017, EPA approval 2/21/2018). The facility was not addressed in the TMDL. The unnamed tributary is ephemeral and a Tier 1 water. The area is designated as Public Water Supply.

7. The unnamed tributary to Coleman Creek is a surface water located wholly within the Commonwealth and is a “state water” under the State Water Control Law.
8. During the October 1, 2020 inspection, DEQ staff observed sediment-laden stormwater runoff flowing from a leaking temporary outfall structure into surface waters. Sediment erosion and deposition resulted from the lack of implementation and maintenance of erosion and sediment controls and other best management practices.

Va. Code § 62.1-44.5(A)(3) states in part: "Except in compliance with a certificate or permit issued by the Board or other entity authorized by the Board to issue a certificate or permit pursuant to this chapter, it shall be unlawful for any person to:...otherwise alter the physical, chemical, or biological properties of state waters..."

9 VAC 25-870-54(B) states in part: “An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities.”

9 VAC 25-870-310(A) states: “Except in compliance with a state permit issued by the board pursuant to the Virginia Stormwater Management Act, it shall be unlawful for any person to discharge stormwater into state waters from Municipal Separate Storm Sewer Systems or land-disturbing activities.”

9. During October 1, 2020 inspection, DEQ staff observed a sediment basin with a leaking temporary outfall structure which required maintenance.

9 VAC 25-840-60(A) states in part: “All erosion and sediment control structures and systems shall be maintained, inspected and repaired as needed to insure continued performance of their intended function...”

9 VAC 25-870-54(B) states in part: “An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities.”

2019 Permit Part II(F)(1) states in part: “The operator shall implement the SWPPP and subsequent amendments, modifications, and updates from commencement of land disturbance until termination of general permit coverage as specified in Part I F . . . All

control measures shall be properly maintained in effective operating condition in accordance with good engineering practices and, where applicable, manufacturer specifications. If a site inspection required by Part II G identifies a control measure that is not operating effectively, corrective actions shall be completed as soon as practicable, but no later than seven days after discovery or a longer period as established by the VSMP authority, to maintain the continued effectiveness of the control measures.”

10. During the October 8, 2020 inspection, DEQ staff observed that 600 linear feet of stream channel was impacted with greater than 2 inches of eroded sediment deposition. This impact was not authorized by DEQ.

Va. Code § 62.1-44.15:20(A)(3) states in part: "Except in compliance with an individual or general Virginia Water Protection Permit issued in accordance with this article, it shall be unlawful to... alter the physical, chemical, or biological properties of state waters..."

9 VAC 25-210.50(A) states in part: “Except in compliance with a VWP permit, unless the activity is otherwise exempted or excluded, no person shall... discharge any pollutant into, or... otherwise alter the physical, chemical, or biological properties of state waters...”

11. During the January 5, 2021 inspection, DEQ observed that soil stabilization measures were not applied to sediment basin side slopes and sediment basin outlet protection.

9 VAC 25-840-40(1) states: “Permanent or temporary soil stabilization shall be applied to denuded areas within seven days after final grade is reached on any portion of the site. Temporary soil stabilization shall be applied within seven days to denuded areas that may not be at final grade but will remain dormant for longer than 14 days. Permanent stabilization shall be applied to areas that are to be left dormant for more than one year.”

9 VAC 25-840-40(5) states: “Stabilization measures shall be applied to earthen structures such as dams, dikes and diversions immediately after installation.”

9 VAC 25-840-40(7) states: “Cut and fill slopes shall be designed and constructed in a manner that will minimize erosion. Slopes that are found to be eroding excessively within one year of permanent stabilization shall be provided with additional slope stabilizing measures until the problem is corrected.”

9 VAC 25-840-60(A) states: “All erosion and sediment control structures and systems shall be maintained, inspected and repaired as needed to insure continued performance of their intended function. A statement describing the maintenance responsibilities of the permittee shall be included in the approved erosion and sediment control plan.”

9 VAC 25-870-54(B) states in part: “An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities.”

2019 Permit Part II(B)(2)(c)(8) states: “An approved erosion and sediment control plan, ‘agreement in lieu of a plan,’ or erosion and sediment control plan prepared in accordance with department-approved annual standards and specifications, implemented to: . . . (8) Ensure initiation of stabilization activities, as defined in 9VAC25-880-1, of disturbed areas immediately whenever any clearing, grading, excavating, or other land-disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 days . . .”

2019 Permit Part II(F)(1) states in part: “The operator shall implement the SWPPP and subsequent amendments, modifications, and updates from commencement of land disturbance until termination of general permit coverage as specified in Part I F . . . All control measures shall be properly maintained in effective operating condition in accordance with good engineering practices and, where applicable, manufacturer specifications. If a site inspection required by Part II G identifies a control measure that is not operating effectively, corrective actions shall be completed as soon as practicable, but no later than seven days after discovery or a longer period as established by the VSMP authority, to maintain the continued effectiveness of the control measures.”

12. During the January 5, 2021 inspection, DEQ staff observed that slope drains on sediment basin side slopes were not stabilized and eroded.

9 VAC 25-840-40(8) states: “Concentrated runoff shall not flow down cut or fill slopes unless contained within an adequate temporary or permanent channel, flume or slope drain structure.”

9 VAC 25-840-60(A) states: “All erosion and sediment control structures and systems shall be maintained, inspected and repaired as needed to insure continued performance of their intended function. A statement describing the maintenance responsibilities of the permittee shall be included in the approved erosion and sediment control plan.”

9 VAC 25-870-54(B) states in part: “An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities.”

2019 Permit Part II(F)(1) states in part: “The operator shall implement the SWPPP and subsequent amendments, modifications, and updates from commencement of land disturbance until termination of general permit coverage as specified in Part I F . . . All control measures shall be properly maintained in effective operating condition in accordance with good engineering practices and, where applicable, manufacturer specifications. If a site inspection required by Part II G identifies a control measure that is not operating effectively, corrective actions shall be completed as soon as practicable, but no later than seven days after discovery or a longer period as established by the VSMP authority, to maintain the continued effectiveness of the control measures.”

13. During the January 5, 2021 inspection, DEQ staff observed that stormwater conveyance channels draining to sediment basins were not stabilized and eroded.

9 VAC 25-840-40(11) states: “Before newly constructed stormwater conveyance channels or pipes are made operational, adequate outlet protection and any required temporary or permanent channel lining shall be installed in both the conveyance channel and receiving channel.”

9 VAC 25-840-60(A) states: “All erosion and sediment control structures and systems shall be maintained, inspected and repaired as needed to insure continued performance of their intended function. A statement describing the maintenance responsibilities of the permittee shall be included in the approved erosion and sediment control plan.”

9 VAC 25-870-54(B) states in part: “An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities.”

2019 Permit Part II(B)(2)(c)(8) states: “An approved erosion and sediment control plan, ‘agreement in lieu of a plan,’ or erosion and sediment control plan prepared in accordance with department-approved annual standards and specifications, implemented to: . . . (8) Ensure initiation of stabilization activities, as defined in 9VAC25-880-1, of disturbed areas immediately whenever any clearing, grading, excavating, or other land-disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 days . . .”

2019 Permit Part II(F)(1) states in part: “The operator shall implement the SWPPP and subsequent amendments, modifications, and updates from commencement of land disturbance until termination of general permit coverage as specified in Part I F . . . All control measures shall be properly maintained in effective operating condition in accordance with good engineering practices and, where applicable, manufacturer specifications. If a site inspection required by Part II G identifies a control measure that is not operating effectively, corrective actions shall be completed as soon as practicable, but no later than seven days after discovery or a longer period as established by the VSMP authority, to maintain the continued effectiveness of the control measures.”

14. During the January 5, 2021 inspection, DEQ staff observed sediment collected at super silt fence below a sediment basin and a stockpile of collected sediment that required removal and proper disposal.

9 VAC 25-840-60(A) states: “All erosion and sediment control structures and systems shall be maintained, inspected and repaired as needed to insure continued performance of their intended function. A statement describing the maintenance responsibilities of the permittee shall be included in the approved erosion and sediment control plan.”



9 VAC 25-870-54(B) states in part: "An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities."

2019 Permit Part II(F)(1) states in part: "The operator shall implement the SWPPP and subsequent amendments, modifications, and updates from commencement of land disturbance until termination of general permit coverage as specified in Part I F . . . All control measures shall be properly maintained in effective operating condition in accordance with good engineering practices and, where applicable, manufacturer specifications. If a site inspection required by Part II G identifies a control measure that is not operating effectively, corrective actions shall be completed as soon as practicable, but no later than seven days after discovery or a longer period as established by the VSMP authority, to maintain the continued effectiveness of the control measures."

15. During the May 4, 2021 desktop audit, DEQ staff documented that 125 linear feet of stream channel was impacted with a bentonite slurry. This impact was not authorized by DEQ.

Va. Code § 62.1-44.15:20(A)(3) states in part: "Except in compliance with an individual or general Virginia Water Protection Permit issued in accordance with this article, it shall be unlawful to... alter the physical, chemical, or biological properties of state waters..."

9 VAC 25-210.50(A) states in part: "Except in compliance with a VWP permit, unless the activity is otherwise exempted or excluded, no person shall... discharge any pollutant into, or... otherwise alter the physical, chemical, or biological properties of state waters..."

16. During the July 15, 2021 inspection, DEQ staff observed that 1,130 linear feet of stream channel was impacted with sediment due to a sediment basin failure. This impact was not authorized by DEQ.

Va. Code § 62.1-44.15:20(A)(3) states in part: "Except in compliance with an individual or general Virginia Water Protection Permit issued in accordance with this article, it shall be unlawful to... alter the physical, chemical, or biological properties of state waters..."

9 VAC 25-210.50(A) states in part: "Except in compliance with a VWP permit, unless the activity is otherwise exempted or excluded, no person shall... discharge any pollutant into, or... otherwise alter the physical, chemical, or biological properties of state waters..."

17. On July 26, 2021, it was reported to DEQ, and DEQ staff confirmed, that 495 linear feet of stream channel was impacted with sediment due to an erosion and sediment control measure failure. This impact was not authorized by DEQ.

Va. Code § 62.1-44.15:20(A)(3) states in part: "Except in compliance with an individual or general Virginia Water Protection Permit issued in accordance with this article, it shall be unlawful to... alter the physical, chemical, or biological properties of state waters..."

9 VAC 25-210.50(A) states in part: "Except in compliance with a VWP permit, unless the activity is otherwise exempted or excluded, no person shall... discharge any pollutant into, or... otherwise alter the physical, chemical, or biological properties of state waters..."

18. During the July 28, 2021 inspection, DEQ staff observed a sediment basin side slope, the area between sediment basins, and a sediment basin dam slope were not stabilized and eroded.

9 VAC 25-840-40(1) states: "Permanent or temporary soil stabilization shall be applied to denuded areas within seven days after final grade is reached on any portion of the site. Temporary soil stabilization shall be applied within seven days to denuded areas that may not be at final grade but will remain dormant for longer than 14 days. Permanent stabilization shall be applied to areas that are to be left dormant for more than one year."

9 VAC 25-870-54(B) states in part: "An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities."

2019 Permit Part II(B)(2)(c)(8) states: "An approved erosion and sediment control plan, 'agreement in lieu of a plan,' or erosion and sediment control plan prepared in accordance with department-approved annual standards and specifications, implemented to: . . . (8) Ensure initiation of stabilization activities, as defined in 9VAC25-880-1, of disturbed areas immediately whenever any clearing, grading, excavating, or other land-disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 days . . ."

2019 Permit Part II(B)(5)(b)(1) states: "Permanent or temporary soil stabilization shall be applied to denuded areas within seven days after final grade is reached on any portion of the site."

2019 Permit Part II(F)(1-2) states: "SWPPP implementation. The operator shall implement the SWPPP and subsequent amendments, modifications, and updates from commencement of land disturbance until termination of general permit coverage as specified in Part I F. 1. All control measures shall be properly maintained in effective operating condition in accordance with good engineering practices and, where applicable, manufacturer specifications. If a site inspection required by Part II G identifies a control measure that is not operating effectively, corrective actions shall be completed as soon as practicable, but no later than seven days after discovery or a longer period as established by the VSMP authority, to maintain the continued effectiveness of the control measures. 2. If site inspections required by Part II G identify an existing control measure that needs to be modified or if an additional or alternative control measure is necessary for any reason, implementation shall be completed prior to the next anticipated measurable storm event. If implementation prior to the next anticipated measurable storm event is impracticable, then additional or alternative control measures shall be implemented as

soon as practicable, but no later than seven days after discovery or a longer period as established by the VSMP authority.”

19. During the July 24, 2019 inspection, DEQ staff observed silt fence in need of replacement or maintenance.

9 VAC 25-840-60(A) states: “All erosion and sediment control structures and systems shall be maintained, inspected and repaired as needed to insure continued performance of their intended function. A statement describing the maintenance responsibilities of the permittee shall be included in the approved erosion and sediment control plan.”

2019 Permit Part II(F)(1) states: “All control measures shall be properly maintained in effective operating condition in accordance with good engineering practices and, where applicable, manufacturer specifications. If a site inspection required by Part II G identifies a control measure that is not operating effectively, corrective actions shall be completed as soon as practicable, but no later than seven days after discovery or a longer period as established by the VSMP authority, to maintain the continued effectiveness of the control measures.”

20. During the July 28, 2021 inspection, DEQ staff observed concrete washout discarded directly on the ground surface and not into a designated concrete washout area as required in the SWPPP’s Pollution Prevention Plan.

9 VAC 25-870-56(A) states in part: “A plan for implementing pollution prevention measures during construction activities shall be developed, implemented, and updated as necessary...”

2019 Permit Part II(B)(4)(e)(5) states: “Direct concrete wash water into a leak-proof container or leak-proof settling basin. The container or basin shall be designed so that no overflows can occur due to inadequate sizing or precipitation. Hardened concrete wastes shall be removed and disposed of in a manner consistent with the handling of other construction wastes. Liquid concrete wastes shall be removed and disposed of in a manner consistent with the handling of other construction wash waters and shall not be discharged to surface waters.”

21. During the July 28, 2021 inspection, DEQ staff observed a stormwater conveyance channel, which discharges to a sediment basin, was not stabilized.

9 VAC 25-840-40(11) states: “Before newly constructed stormwater conveyance channels or pipes are made operational, adequate outlet protection and any required temporary or permanent channel lining shall be installed in both the conveyance channel and receiving channel.”

9 VAC 25-870-54(B) states in part: “An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities.”

2019 Permit Part II(B)(2)(c)(8) states: “An approved erosion and sediment control plan, ‘agreement in lieu of a plan,’ or erosion and sediment control plan prepared in accordance with department-approved annual standards and specifications, implemented to: . . . (8) Ensure initiation of stabilization activities, as defined in 9VAC25-880-1, of disturbed areas immediately whenever any clearing, grading, excavating, or other land-disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 days . . .”

2019 Permit Part II(B)(5)(b)(1) states: “Permanent or temporary soil stabilization shall be applied to denuded areas within seven days after final grade is reached on any portion of the site.”

2019 Permit Part II(F)(1-2) states: “SWPPP implementation. The operator shall implement the SWPPP and subsequent amendments, modifications, and updates from commencement of land disturbance until termination of general permit coverage as specified in Part I F. 1. All control measures shall be properly maintained in effective operating condition in accordance with good engineering practices and, where applicable, manufacturer specifications. If a site inspection required by Part II G identifies a control measure that is not operating effectively, corrective actions shall be completed as soon as practicable, but no later than seven days after discovery or a longer period as established by the VSMP authority, to maintain the continued effectiveness of the control measures. 2. If site inspections required by Part II G identify an existing control measure that needs to be modified or if an additional or alternative control measure is necessary for any reason, implementation shall be completed prior to the next anticipated measurable storm event. If implementation prior to the next anticipated measurable storm event is impracticable, then additional or alternative control measures shall be implemented as soon as practicable, but no later than seven days after discovery or a longer period as established by the VSMP authority.”

22. During the July 30, 2021 inspection, DEQ staff observed sediment basin slope failures which resulted in an unauthorized sediment discharge to surface waters.

Va. Code § 62.1-44.5(A)(3) states in part: "Except in compliance with a certificate or permit issued by the Board or other entity authorized by the Board to issue a certificate or permit pursuant to this chapter, it shall be unlawful for any person to:...otherwise alter the physical, chemical, or biological properties of state waters..."

9 VAC 25-870-310(A) states: “Except in compliance with a state permit issued by the board pursuant to the Virginia Stormwater Management Act, it shall be unlawful for any person to discharge stormwater into state waters from Municipal Separate Storm Sewer Systems or land-disturbing activities.”

23. PRO issued a Notice of Violation for the violations noted above as follows: NOV No. 2020-10-PRO-204 & 2010-001577 issued on December 3, 2020.
24. Based on the foregoing information, the Board concludes that HITT violated Va. Code §§ 62.1-44.15:20(A) and 62.1-44.5(A)(3); 9 VAC 25-210-50(A); 9 VAC 25-840-60(A); 9 VAC 25-870-54(B); 9 VAC 25-870-56; 9 VAC 25-870-310(A); 9 VAC 25-880-60; and the associated permit requirements referenced above.
25. HITT has submitted documentation that verifies and DEQ staff inspected the Facility on October 6, 2021, and verified that the violations described in paragraphs C(8) through C(22), above, have been corrected.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, 62.1-44.15:25, and 62.1-44.15:48, the Board orders:

1. HITT pay a total civil charge of **\$56,950** within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

HITT shall include its Federal Employer Identification Number (FEIN) with the civil charge payment. HITT shall indicate that the payment is being made in accordance with the requirements of this Order for deposit as follows: **\$32,500** for deposit into the Virginia Environmental Emergency response Fund (VEERF) and **\$24,450** for deposit into the Virginia Stormwater Management Fund. If the Department has to refer collection of moneys due under this Order to the Department of Law, HITT shall be liable for attorneys' fees of 30% of the amount outstanding.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of HITT for good cause shown by HITT, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.

2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, HITT admit to the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. HITT consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. HITT declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and waive the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by HITT to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. HITT shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. HITT shall demonstrate that such circumstances were beyond their control and not due to a lack of good faith or diligence on their part. HITT shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;

- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

- 9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
- 10. This Order shall become effective upon execution by both the Director or his designee and HITT. Nevertheless, HITT agrees to be bound by any compliance date which precedes the effective date of this Order.
- 11. This Order shall continue in effect until:
  - a. The Director or his designee terminates the Order after HITT has completed all of the requirements of the Order;
  - b. HITT petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
  - c. The Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to HITT.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve HITT from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

- 12. Any plans, reports, schedules or specifications attached hereto or submitted by HITT and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
- 13. The undersigned representative of HITT certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind HITT to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of HITT.

14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

15. By its signature below, HITT voluntarily agrees to the issuance of this Order.

And it is so ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
James Golden, Regional Director  
Department of Environmental Quality

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HITT Contracting, Inc. voluntarily agrees to the issuance of this Order.

Date: 3/1/22 By: Josh Shelton (Person), SR Project Manager (Title)  
HITT Contracting, Inc.

Commonwealth of Virginia

City/County of Richmond

The foregoing document was signed and acknowledged before me this 1 day of March, 2022, by Josh Shelton who is senior project manager of HITT Contracting, Inc. on behalf of the corporation.

Christina L. Lafoon  
Notary Public

7740857  
Registration No.

My commission expires: July 31, 2025

Notary seal:

